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MAY 16 1996

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May 16, 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
TELECOPIER (202) 296-8893

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

96-158

Attention: Geraldine Matise, Chief
Network Services Division

REQUEST FOR EXPEDITED ACTION

CHANGE OF LATA ASSOCIATION
BY RURAL INDEPENDENT TELEPHONE COMPANY

Received

MAY 20 1996

Common Carrier Bureau
Network Service Division
Office of the Chief

Dear Mr. Caton:

Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains), through counsel and in conjunction with Mid-Plains' acquisition of the Silverton, Texas telephone exchange from GTE Southwest (GTE), hereby requests expedited action on the instant request to change the LATA association of the Silverton exchange from the Amarillo, Texas LATA (546) to the Lubbock, Texas LATA (544). Mid-Plains makes this request for expedited action because of its immediate needs, discussed more fully below, and the current uncertainty as to the Commission's role, if any, of acting on LATA association changes by Independent telephone companies arising from the enactment of the Telecommunications Act of 1996 (the "Federal Act").¹

¹/ Pub. L. No. 104-104, 110 Stat. 56 (1996). As indicated in the attached discussion, the Federal Act has vested certain jurisdiction within the Commission concerning items arising from the Modified Final Judgment. See Attachment. Because the Federal Act is silent regarding the LATA association requested herein, Mid-Plains submits that no formal approval by the Commission is required. Further, a notification procedure is permissible. In order to avoid delay (and not waiving any of its rights with regard to future requests), Mid-Plains will engage in a truncated version of the notification procedure set forth in the Attachment due to the May 31, 1996 date upon which it proposes to reconfigure its network. Mid-Plains submits that this procedure is conducive to "the proper dispatch of business and the . . . ends of justice." See 47 U.S.C. § 154(j); see also 47 U.S.C. § 154(i).

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Background and Statement of Facts

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mid-Plains is a not-for-profit cooperative engaged in the provision of local exchange telephone service to subscribers in Texas. For the reasons set forth below, Mid-Plains submits that the LATA association change will serve the public interest by effecting operational efficiencies, allowing Mid-Plains to provide high quality telecommunications service to approximately 430 subscribers in Silverton in a prudent manner.

Mid-Plains plans to close its transaction with GTE on May 31, 1996. Mid-Plains has replaced the CXP-5 Analog Switch at Silverton with a Northern DMS-10 RLCM Digital Remote Switch that will connect to Mid-Plains' existing Northern DMS-10 Host Switch in Kress, Texas. The Kress Host Switch, upgraded to SS7 technology in 1995, is associated with the Lubbock LATA. With SS7 technology in place at Silverton, Mid-Plains will be able to provide Touch Tone and CLASS Features, including Caller ID.

Toll and access service currently is provided over copper facilities using Lenkurt Analog Carrier Systems between Silverton and the GTE access tandem at Memphis, Texas. Immediately after the consummation of its transaction with GTE, Mid-Plains plans to commence the "cut over" of traffic, linking Silverton and Kress via fiber optic cable and route Silverton traffic into Lubbock over existing fiber facilities.

In addition to the need for high quality digital service in Silverton, there are certain operational realities which require the association of the Silverton exchange with the Lubbock LATA. Mid-Plains' Bean exchange is served by a remote connected the Kress Host Switch and is associated with the Lubbock LATA. The Bean exchange completely surrounds the Silverton exchange. Failure to effect a LATA boundary change would, therefore, result in an inefficient operational configuration.

Plainview, Texas, the nearest major community of interest to Silverton, is in the Lubbock LATA. Emergency 911 service for Silverton is handled by Tulia (Swisher County), Texas. Tulia is also associated with the Lubbock LATA. These factors also contribute to the need for LATA boundary changes in this instance.

Notification Procedure

Mid-Plains will employ the following notification procedure to provide the Commission with information which allows it to maintain a record of LATA association changes.

- (1) Mid-Plains is serving concurrently, via first class U.S. mail, copies of the instant request on all affected interconnecting

- (2) If Mid-Plains receives an objection from any of such carriers within the next 11 days,² it will notify the Commission in writing as soon as reasonably possible.
- (3) If no objection is made within 11 days (i.e., by close of business on May 28, 1996), Mid-Plains will notify the Commission of this fact.
- (4) On May 29, 1996, Mid-Plains will file with the Commission a final notification of LATA association change, including Mid-Plains' certification that all affected carriers either have not objected to or have concurred in the LATA change and, in the absence of formal action prior to that date, will again request Commission approval of the requested change in LATA association without waiving its rights with regard to any future LATA changes which may occur.

Concurrence of Affected Local Exchange Carriers

Mid-Plains has obtained the concurrence of the affected interconnecting carriers, Southwestern Bell and GTE.

Mid-Plains seeks expedited action on the instant request.³

Respectfully submitted,

MID-PLAINS RURAL TELEPHONE
COOPERATIVE, INC.

By Thomas J. Moorman
Margaret Nyland

Its Attorneys


cc: Kent Nilsson

²/ The eleventh day is the first business day after the observance of Memorial Day.

³/ Attached hereto is a facsimiled declaration of Danny Johnson, Manager of Mid-Plains. An original of this declaration will be filed with the Commission upon its receipt.

**DECLARATION OF DANNY JOHNSON,
MANAGER OF MID-PLAINS RURAL TELEPHONE COOPERATIVE, INC.**

I, Danny Johnson, Manager of Mid-Plains Rural Telephone Cooperative, Inc., do hereby declare under penalties of perjury that I have read the foregoing "Request for Expedited Action" and the information contained therein is true and accurate to the best of my knowledge, information and belief.



Danny Johnson, Manager
Mid-Plains Rural Telephone
Cooperative, Inc.

Date: May 15, 1996

May 16, 1996

[CARRIER NAME]

Re: Mid-Plains Telephone Cooperative, Inc.
LATA Association Change

Dear ____:

We are filing today with the Federal Communications Commission (Commission) a request for expedited action (copy attached) to change the Silverton, Texas exchange from the Amarillo LATA (546) to the Lubbock LATA (544).

Should you have any questions concerning this plan, please call us at your earliest convenience. As indicated in the attached Request, if we do not hear from you by close of business on May 28, 1996, we will assume that you have no objection to the plan and will so inform the Commission.

Should you have any questions concerning this matter, please call.

Sincerely,

Danny Johnson
Manager
Mid-Plains Telephone
Cooperative, Inc.



May 16, 1996

Geraldine Matise, Esq.
Chief, Network Services Division
Common Carrier Bureau
Federal Communications Commission
2000 M Street, N.W., Room 253
Washington, D.C. 20554

Dear Ms. Matise:

For a variety of reasons, such as the acquisition of exchanges from larger companies, NTCA member rural telephone companies on occasion reconfigure their networks to route toll traffic to points of connection with BOC offices in different LATAs from the ones with which the rural company was originally associated by the Plan of Reorganization approved by Judge Greene. Under the MFJ these reconfigurations were considered to have the effect of involving the BOC in the origination and termination of interLATA traffic. Accordingly, a procedure was established in which the BOC and/or the independent requested the Department of Justice to recommend to Judge Greene that the LATA boundaries approved under the MFJ be waived as to the traffic involved. In almost all cases the waivers were approved, however, the process often took several months, or more.

Now that the MFJ has been terminated, the question has arisen as to whether, under the Telecommunications Act of 1996 ("1996 Act"), FCC approval is required for a rural telephone company to re-home traffic to a BOC interconnection point in a LATA other than the one with which the traffic was associated by the MFJ court. Assuming such approval is required, we propose a simple notification procedure which will be consistent with the requirements, intent and purpose of the 1996 Act and will minimize the regulatory burden on the resources of the Commission, the small companies, and the BOCs

BACKGROUND

A primary purpose of the MFJ was to create a regulatory climate conducive to the development of competition in the long distance industry.¹ On the assumption that such

¹ *U.S. v. Western Electric*, 552 F. Supp. 131, 188 (D.D.C. 1982).

competition was most likely to develop between Metropolitan Statistical Areas (MSAs), AT&T was required to develop a plan which identified those locations between which a BOC could carry traffic and those which it could not, thus preserving the competitive markets for interexchange carriers free from competition from BOCs which also controlled their access to subscribers for origination and termination of such calls². These areas between which a BOC could not carry traffic were designated "Local Access and Transport Areas" or "LATAs".³

The MFJ itself made no mention of independent telephone companies and did not purport to govern their activities. As the parties developed the reorganization plan, they recognized that the BOCs participated with independents in jointly provided access to interexchange carriers and decided to "assign" the traffic from independent offices to a LATA for purposes of determining whether a BOC could or could not carry that traffic⁴. As independent networks were reconfigured in the normal course of evolution the waiver process described above was utilized.⁵

The 1996 Act terminated the MFJ but retained the prohibition on BOC provision of interLATA traffic originating in a BOC's region until the FCC approves an application meeting certain criteria which are intended to assure the existence or opportunity for local competition.⁶

² *U.S. v. Western Electric*, 569 F. Supp. 990 (D.D.C. 1983).

³ The Department of Justice explained that the exchange areas (later termed LATAs) to be determined under the decree "will be large enough to comprehend contiguous areas having common social and economic characteristics but not so large as to defeat the intent of the decree to separate the provision of intercity services from the provision of local exchange service." Competitive Impact Statement at 30. The MFJ used the term "exchange" but the parties soon realized that this term would be difficult to distinguish from the meaning of exchange as used in the Communications Act and in industry usage. The amount of traffic within and between LATAs was also to be used to divide assets between the BOCs and AT&T.

⁴ 569 F. Supp. 990, 1008 and n.85 (D.D.C. 1983). Some independent areas were determined to be unassigned, thus all traffic from them was considered interLATA which could not be carried by a BOC except as access. 569 F. Supp. 990, 1057, 1113, n.240 (D.D.C. 1983). With no BOCs in Alaska or Hawaii, no designation was made as to the independents in those states. The term "contiguous" as used in the definition of LATA in the 1996 Act, § 3(43) is not modified by the phrase "one or more" used in the definition of "exchange" in Section IV.G of the MFJ and so can not be interpreted literally in most states because the BOC serving territory is made up of islands (generally towns and cities) of BOC area surrounded by independents, i.e., many BOC exchanges in a given LATA are not actually contiguous to each other. The court, in any case, considered independent territory irrelevant to the contiguity question. 569 F. Supp. 990, 1010 (D.D.C. 1983).

⁵ The Department of Justice preferred to utilize waivers whenever possible, rather than revise the LATA plan.

⁶ 1996 Act, § 271. The Commission is given no express authority to waive any portion of Section 271 and its requirements are expressly excluded from the Commission's forbearance authority, Section 401 of the 1996 Act.

The 1996 Act defines LATA to include those areas established pre-enactment containing no more than one MSA except as permitted under the MFJ and those established or modified post-enactment by a BOC and approved by the Commission. "InterLATA" is defined as "telecommunications between a point located in a [LATA] and a point located outside such area. " No mention is made in the Act or in the Conference report of what relationship, if any, is intended between independent telephone companies and LATAs, however it is clear that the interLATA prohibition applies only to BOCs and that independents are not "in" LATAs.⁷

It was well established under the MFJ that independents were not "in" LATAs⁸ and that the MFJ assignment of their traffic to LATAs was only for the purposes of enforcing the decree in regard to the BOCs and that no restrictions existed as to independents.⁹ Nothing in the 1996 Act appears to change this; the definition of a LATA does not include independent territory. The definition of "interLATA", traffic between a point in a BOC LATA and a point outside, appears to include BOC to independent traffic.¹⁰ Section 271(f) however sanctions activities previously approved by the Court, apparently including the various waivers issued in connection with changes in association of independent traffic

While thus apparently authorizing continuation of existing BOC-independent traffic, the 1996 Act, has no explicit mechanism for revisions in independent associations, and the Commission is without authority to waive or forebear from enforcing Section 271.¹¹ The Commission does, however, have authority to approve "modifications" in LATAs by BOCs.¹² Changes in association of independent traffic are not, as explained above, modifications of a

⁷ The GTE consent decree did not have an interLATA prohibition, and was entirely terminated by the 1996 Act. Sec. 601.

⁸ 569 F. Supp. 990, 1009, n.89 (D.D.C. 1983) "there is no 'inclusion' or 'incorporation' of ITC territory into the LATAs."

⁹ 569 F.Supp. 990, 1113 (D.D.C. 1983)

¹⁰ Section 271(b)(4) of the 1996 Act excludes traffic terminated by a BOC from the interLATA prohibition, however this exclusion will cover only a minor portion of BOC-Independent traffic, the majority involves jointly provided access which originates or terminates on the independent facilities.

¹¹ 1996 Act, § 401, § 10(d).

¹² 1996 Act, § 3(43)(B)

LATA, *per se*. However, the associated traffic is closely affiliated with, or incidental to, the core attributes of a LATA. The Commission could, therefore, conclude that its authority includes that of approving a modification of the traffic associated with a LATA until a BOC is permitted to provide interLATA services.¹³

PROPOSAL

No specific procedure is prescribed by the 1996 Act for obtaining such approval. We suggest that in order to expedite the process and minimize the cost to the carriers and the Commission, the following streamlined procedure be followed, at least for Rural Telephone Companies: The Rural Telephone Company will provide notice to the Commission and all affected interconnecting LECs and all interexchange carriers which purchase access from it of the pending change in LATA association. Included in the notification will be the concurrence of the BOC and a request that any objections be provided within 10 days. If no objections are received, the Company will so notify the Commission and the modification be deemed approved if no action by the Commission is taken within an additional 10 days.

In the event objections are raised, the Rural Telephone Company will submit them to the Commission, along with its response thereto and either a request that the modification be approved despite the objection, or a proposed revision of its plan to address the objection.

The procedure described above is consistent with the public policy purposes of the MFJ and its successor, Section 271. Both presumed that where a BOC had essentially monopoly control over the origination and termination of traffic in two or more MSAs, it would be able to impede or prevent competition between them. Whether the traffic of a rural telephone company is routed to a BOC tandem in one LATA or an adjoining LATA cannot, as a practical matter, have more than a *de minimus* effect on the viability of competition between the two LATAs. Rural telephone companies constitute less than 3% of the nation's access lines and are spread over all jurisdictions except the District of Columbia, Delaware, Rhode Island and Hawaii. There was therefore no reason for Congress to establish a regulatory procedure to control the routing of this traffic in order to protect interLATA competition. The decision to end all consent decree restrictions on GTE, the fourth largest US LEC in 1995 with several times the total access lines of rural telephone companies distributed over fewer states, reinforces the conclusion that no interLATA regulation of independent traffic was intended.

Where the independent does not qualify as a rural telephone company under the 1996 Act, the Commission might want to provide for a brief public comment period.

¹³ See, 47 U.S.C. § 154(i).

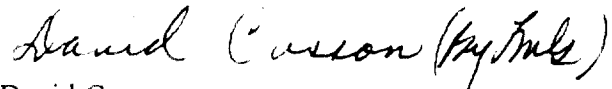
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ATTACHED NOTIFICATIONS

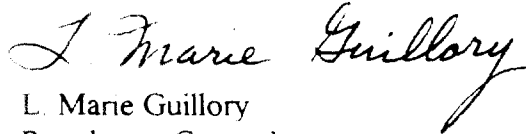
Although we recognize that the Commission may want some time to consider the foregoing proposal, or to seek public comment on the underlying policy or procedures. However, two NTCA members have imminent plans to reroute their traffic. The public interest would not be served by delay in authorizing the BOC to accept the change in LATA associations involved, since the rerouting will improve service and reduce cost to the public. The Commission has ample authority to proceed with these two cases, if it decides to consider the general matter for some time.¹⁴

I would be pleased to discuss any aspect of this proposal with you or your staff.

Sincerely,

A handwritten signature in cursive script that reads "David Cosson (by title)".

David Cosson
Vice President

A handwritten signature in cursive script that reads "L. Marie Guillory".

L. Marie Guillory
Regulatory Counsel

DC:rhb

cc: Kenneth Nilsson

¹⁴ 47 U.S.C. § 154(i), (j).